

JUN - 9 2016

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

JULIA C. BUDLEY, CLERK
BY: 
DEPUTY CLERK

UNITED STATES OF AMERICA

Case No. 7:98-cr-00007-1

v.

MEMORANDUM OPINION

DEDRIC LEE WILEY,
Petitioner.

By: Hon. Jackson L. Kiser
Senior United States District Judge

Dedric Lee Wiley, a federal inmate proceeding pro se, filed a motion to appoint counsel, seeking to invalidate his sentence based on Johnson v. United States, 576 U.S. ___, 135 S. Ct. 2551, 2555 (2015). Accordingly, I construe the motion to appoint counsel as a motion to vacate, set aside, or correct sentence pursuant to 28 U.S.C. § 2255. Court records indicate that the court already dismissed (Dkt. No. 33-34) a prior § 2255 motion (Dkt. No. 32). Thus, the construed § 2255 motion is a second or subsequent motion under 28 U.S.C. § 2255(h). Cf. United States v. Hairston, 754 F.3d 258, 262 (4th Cir. 2014).

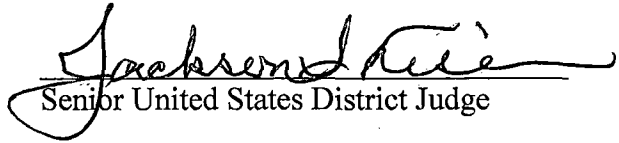
The court may consider a second or successive § 2255 motion only upon specific certification from the United States Court of Appeals for the Fourth Circuit that a claim in the motion meets certain criteria. See 28 U.S.C. § 2255(h). As Petitioner has not submitted any evidence of having obtained certification from the Court of Appeals to file a second or successive § 2255 motion, the court dismisses the § 2255 motion without prejudice as successive.¹ Based upon the court's finding that Petitioner has not made the requisite substantial

¹ Johnson is hereby advised of the procedure for obtaining certification to have this court review a successive § 2255 motion. Petitioner must submit a copy of the successive § 2255 motion to the Court of Appeals, along with a motion requesting a three-judge-panel certification that the district court may review the successive § 2255 motion. See 28 U.S.C. § 2244(b). A Fourth Circuit form and instructions for filing this motion are available from the Fourth Circuit at the following address: Office of the Clerk, United States Court of Appeals for the Fourth Circuit, 1100 E. Main St., Suite 501, Richmond, VA 23219.

showing of denial of a constitutional right as required by 28 U.S.C. § 2253(c) and Slack v.

McDaniel, 529 U.S. 473, 484 (2000), a certificate of appealability is denied.

ENTER: This 9th day of June, 2016.


Senior United States District Judge